OVERVIEW OF MONEY LAUNDERING

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I. Introduction

Money laundering is a term that can mean many different things

- the classic meaning is that money laundering is the act of concealing or disguising criminal proceeds, what is called *concealment money laundering*

- but it can mean other things as well

Some money laundering statutes focus not on the concealment of the source or ownership or location of money derived from a crime that occurred in the past, but on the use of money – tainted or untainted – to promote a new offense in the future

- this is called *promotional money laundering*

Others make it a crime merely to receive, to spend or simply to possess the proceeds of crime

- this is called *transactional money laundering*

Moreover, all three of these modalities may be applied when the defendant is laundering the proceeds of his own crime;

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- what is called self-money laundering

Or may be applied to a third party – a family member, co-conspirator, accountant or lawyer or professional money launderer who launders money on behalf of the one who committed the original crime

- What is called *third-party money laundering* (or sometimes *stand-alone money laundering* if the underlying predicate crime is not charged)

Using this understanding of the different types of money laundering, I will talk about the reasons why a person might want to engage in money laundering activity

- And I will talk in general terms about the ways in which people launder money – what are called *methodologies*

- But I will use the bulk of my time to talk about what the prosecutor has to prove to obtain a conviction for a money laundering offense

II. Why Launder Money

1. Concealment money laundering

The defendant may have several objectives in committing a concealment money laundering offense

- The first and most obvious is that he wants to conceal or disguise the illegal origin of the money and make it appear legitimate

- He may also want to conceal the location of the money so that it cannot be found and seized by law enforcement

- Or he may want to conceal or disguise his relationship to the money, to distance himself from the criminal conduct that generated the money so that he is not convicted of the offense

The ways in which a criminal money launderer may accomplish these objectives are too numerous to mention, but these are a few typical examples

- Running the money through a legitimate business to make the money appear to be legitimate business proceeds

- Commingling tainted money with untainted money so that it is difficult to tell that criminal proceeds are part of an asset

- Depositing money or using it to purchase an asset in a third party's name

- Converting money to another form – such as fixed property, securities, gold or jewelry – and then selling that property (or using is as collateral for a loan)

- Moving the money off-shore to a bank-secrecy jurisdiction, or putting it in an account held by a shell corporation whose ownership is unknown

- Simply engaging in a series of convoluted transactions that make the money impossible to trace

There is also an entire category of cases – called *trade-based money laundering* – where the money launderer uses illicit money as part of an otherwise legitimate business transaction, to acquire (for himself or others) legitimate goods and services

— I'll give more examples as we go on and talk about the elements of a money laundering offense and particular cases

2. Promotional money laundering

As I mentioned, when someone commits a promotional money laundering offense, he is not concerned with concealing or disguising the provenance of the money or its ownership or location

— Rather, his purpose is to use the money to commit or promote the commission of a new crime in the future

In some cases, the money in question is criminal proceeds, but in other cases it is not

- A typical case might involve a drug dealer who is using the proceeds of past illegal drug sales to buy more drugs, to pay his couriers, to pay bribes, or to purchase an airplane to be used in smuggling

- Or it might involve a person who committed a fraud who needs to use the fraud proceeds to keep the scheme going – by luring in new victims, or paying the expenses of a business that is fronting for the fraud scheme

In other cases, however, the defendant is using money – tainted or untainted – to commit some entirely new (and perhaps much more serious) offense

- The classic example of which is terrorist financing

- In a terrorist financing case, the money may be from drug dealing, fraud, or any number of other relatively minor crimes

- Or it may be the proceeds of charitable donations, a legitimate business, or someone's personal wealth

- But the point is that regardless of the source of the money, the money launderer engages in a number of steps designed to use the money to finance an act of terrorism

The ways in which a person would commit a promotional money laundering offense are often the same as those used to commit concealment money laundering:

- Commingling, use of legitimate businesses, use of third party names, moving money off-shore or into shell corporations, engaging in legitimate trade

- The point is that the same techniques that are used to conceal or disguise the source of money derived from a crime in the past can be used to make the money available to commit a new crime in the future

- But in such cases, the prosecutor is not concerned with the source of the money but with the purpose for which it is intended

3. Transactional money laundering: Receiving, spending and possessing criminal proceeds

Finally, some money laundering statutes simply make it an offense to receive criminal proceeds or to spend them

— In fact, in some countries, it is an offense merely to possess criminal proceeds

For example:

- Ukraine, Criminal Code Art. 209:

> (1) Effecting financial transactions . . . involving money or other property known to be proceeds of crime . . .

- Serbia, Criminal Code Art. 231 (pre-2018 Code):

> (1) Whoever . . . obtains, keeps or uses property [knowing] that the property originates from a criminal offense . . . .

- Moldova, Criminal Code Art. 243:

> (1)(c) Money laundering [is] committed by the purchase, possession or use of goods by a person who knew or should have known that such were illegal earnings . . .

In such cases, the defendant's motive is clear

— He simply wants to spend, use or possess the criminal proceeds

What is the point of making this a criminal offense?

— The idea is to make the criminal proceeds untouchable – to make it impossible to receive, spend or possess them without committing a crime – so that the money becomes worthless to the criminal

— And if its worthless to the criminal – if he can't spend it or give it to anyone – these is less incentive for him to commit the crime in the first place

— It is a means of deterrence

So, for example, a criminal who has obtained a lot of money from committing fraud or selling drugs may want to use the money to buy a luxury car, or jewelry for his girlfriend, or invest in fixed property or securities

- If it is an offense to spend criminal proceeds, he cannot do any of those things without committing a new offense

- And if is an offense to *receive* criminal proceeds, then the car dealer, or jewelry dealer, or investment broker *who knows that the money is derived from a crime* cannot take the money without exposing himself to criminal liability as well

- Again, the point being to make the criminal's money worthless to him

Obviously, if the prosecutor is able to bring a criminal charge under such a statute, he or she doesn't have to prove concealment or promotion

- This makes the crime much easier to prove, but the statutory penalty may be less than it would be in a concealment or promotion case

So those are the types of money laundering offenses that we are talking about

- And those are a few of the many ways in which money can be laundered

What we need to talk about now are the elements that a prosecutor would have to prove to obtain a money laundering conviction, and the ways in which he might prove them

- I'm going to discuss the common elements of a typical suite of money laundering statutes, using examples from the case law to illustrate the evidence that might be used to prove each one

III. Common Elements

What are the elements that every country's money laundering statutes tend to have in common?

1. Some type of *financial transaction* conducted by the defendant

2. *Knowledge* on the part of the defendant that the property was criminally derived

3. Proof that the property involved in the transaction was in fact criminal *proceeds*

4. And, depending on the focus of the statute, evidence that the transaction *concealed or was intended to conceal* the criminal proceeds, or *promoted or was intended to promote* another crime

A typical statute is this one from Lithuania:

- Lithuania, Criminal Code Art 216:

  Elements of money laundering:

  1. Performing a financial operation or transaction

  2. Knowing that the money or property was obtained by criminal means

  3. With the intent to "conceal or legalize" money or property

  4. Of his own or of another person

Note: This statute expressly applies to both self-money laundering and third party money laundering

- Serbia, Criminal Code Art. 231 (pre-2018 Code):

  1. Converting or transferring property;

  2. Knowing it is derived from a criminal offense;

  3. With the intent to conceal or misrepresent its unlawful origin.

- Moldova, Criminal Code Art. 243:

  1. Converting or transferring goods;

2. Knowing (or should have known) such goods were illegal earnings;

3. With the intent to conceal or disguise the illegal origin of the property, *or* to help a third party avoid the consequences of having committed a crime.

Let's look at the common elements one at a time.

Financial transaction

Almost all of these statutes required some kind of financial transaction, including converting the property to another form, or transferring ownership to another person

— The only exceptions are the statutes that make it a crime merely to possess criminal proceeds

What is a financial transaction?

— simply stated, a financial transaction is virtually anything you can do with money

— it can involve cash, or monetary instruments, or electronic or other funds

— or it may involve no money at all, but simply the transfer of title to real property or a vehicle, vessel or aircraft

— here are some examples from the case law:

- *United States v. Jenkins*, 633 F.3d 788, 804 (9th Cir. 2011) (wire transfer of funds is a financial transaction);

- *United States v. Bronzino*, 598 F.3d 276, 278 n.1 (6th Cir. 2010) (cashing chips at a casino is a financial transaction);

- *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (writing check to purchase cashier's checks is financial transaction);

- *United States v. Brown*, 31 F.3d 484, 489 n.4 (7th Cir. 1994) (processing credit card charges is a financial transaction);

- *United States v. Day*, 700 F.3d 713, 726 (4th Cir. 2012) (gold – when used as a financial asset – constitutes "funds" so its transfer is a financial transaction);

- *United States v. Hall*, 434 F.3d 42, 52 (1st Cir. 2006) (recording a mortgage is a financial transaction);

- *United States v. Ulbricht,* 2014 WL 3362059, *24 (S.D.N.Y. July 9, 2014) (Bitcoins are "funds" because their purpose is to allow a person to pay for things; thus, paying for things with Bitcoins is a financial transaction);

The simple delivery of cash from one person to another can be a financial transaction

- *United States v. Blair,* 661 F.3d 755, 764 (4th Cir. 2011) (attorney conducts financial transaction when he receives duffle bag stuffed with cash from client in his office);

- *United States v. Reed,* 77 F.3d 139, 142 (6th Cir. 1996) (giving drug proceeds to a courier is a financial transaction that "involves monetary instruments, namely the currency");

One note of caution: except under those statutes that make simple possession of criminal proceeds an offense, the possess and transportation of criminal proceeds by a single individual is not enough

-- for there to be a financial transaction, the defendant either has to use a financial institution to deposit or move the money, or there has to be a transfer or disposition of the property between two people

- *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994) (transporting drug proceeds from Fla. to Tex. not a "transaction" absent evidence of disposition once cash arrived at destination);

Choosing the right financial transaction

The typical crime, conducted for profit, will involve a whole series of financial transactions.

— it could be just one or two transfers, or it could be a complex series of transfers

- for example, in a drug case, someone gets money, gives it to someone in exchange for drugs, that person transfers the money to someone else, he deposits it in the bank, the next guy wires it to Colombia, and so forth.

Choosing the right financial transaction to charge as a money laundering offense may be critical to the prosecutor's case because the financial transaction is the *actus reus* of the crime

- *United States v. Roy*, 375 F.3d 21 (1st Cir. 2004) (conducting a financial transaction is the *actus reus* of section 1956(a)(3) offense; the intent to promote is part of the mens rea);

- *United States v. Mikell*, 163 F. Supp. 2d 720, 739 (E.D. Mich. 2001) (financial transaction is the *actus reus* of the money laundering offense; the proceeds requirement is only a "circumstance element");

Here are some of the issues that may come into play where there are multiple financial transactions.

1. Unit of prosecution

Is each financial transaction a separate offense that must be charged separately?

- Or can a series of financial transactions be charged together in a single allegation

- For example, if the defendant launders drug proceeds through a series of steps, is that one money laundering offense or a series of separate money laundering offenses

- Or if the defendant launders different sums of money at different times in a given period of time, are those separate money laundering offenses or one money laundering offense charged as a continuing course of conduct

The courts in the United States are not all in agreement on those points, and the answer would likely turn on your national law:

- *United States v. Smith*, 44 F.3d 1259, 1265 (4th Cir. 1995) (the financial transaction is the "core" of the money laundering offense, distinguishing one money laundering offense from another);

- *United States v. Majors*, 196 F.3d 1206, 1212 n.14 (11th Cir. 1999) (*dicta*) (money laundering is not a continuing offense; each transaction constitutes a separate offense).

- *United States v. Prescott*, 42 F.3d 1165 (8th Cir. 1994) (charging multiple financial transactions as a continuing course of conduct in a single count is duplicitous);

- *But see United States v. Moloney*, 287 F.3d 236 (2d Cir. 2002) ("a single money laundering count can encompass multiple acts provided that each act is part of a unified scheme");

2. Statute of limitations

Because the financial transaction is the *actus reus* of the money laundering offense, any statute of limitations would run from date on which the financial transaction was complete:

- *United States v. Bucci,* 582 F.3d 108, 116 (1st Cir. 2009) (for purposes of the statute of limitations, a bank deposit occurs when the bank processes it, even though the customer actually made the deposit late in the previous business day);

– so, in a case where there were multiple financial transactions, the prosecutor would typically allege a financial transaction that occurred within the statute of limitations and could prevail, even if the underlying predicate crime occurred *outside* of the limitations period

– that is because proceeds remain proceeds no matter how much time passes

– So, for example, if your statute of limitations for bringing a money laundering charge is five years, and someone has laundering the proceeds of a drug offense that occurred six years ago in a series of transactions, the last of which occurred four years ago, the prosecutor could use that last offense to charge money laundering within the limitations period.

- *United States v. Ross,* 2014 WL 3750452, *1 n.2 (N.D. Cal. Jul. 29, 2014) (because the statute of limitations runs from the date of the money laundering offense, there is no reason money laundering charges cannot be filed more than 5 years after the date of the predicate crime);

- *United States v. Miller*, 2012 WL 2362366 (E.D. Pa. June 21, 2012) (defendant convicted of concealment money laundering when he uses house purchased 10 years earlier with drug proceeds to obtain a new mortgage loan and then launders the proceeds);

3. When the "knowledge" "intent" and "proceeds" elements apply

The choice of the financial transaction to allege as money laundering is also important because it fixes the time at which the other elements apply

-- as we'll discuss, the defendant must have the requisite knowledge and intent, and the property must be criminal proceeds, at the time the financial transaction takes place

- *United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993) (circumstantial evidence insufficient to prove defendant knew money was proceeds of unlawful activity at the time the transaction occurred; what defendant learned afterwards does not help Government);

- *United States v. Hughes*, 230 F.3d 815, 820-21 (5th Cir. 2000) (defendant must know money was criminal proceeds at the time he conducts the money laundering transaction);

"Conducts" a Financial Transaction

To be guilty of a money laundering offense, the defendant must be the person who conducted the transaction

— Depending on your national law, the term "conducts" may be defined broadly or narrowly

— In the US, for example, it is defined broadly to include "initiating, concluding, or participating in initiating, or concluding a transaction."

— so, the receiver of the criminal proceeds can be the money launderer

- *United States v. Gotti*, 459 F.3d 296, 335 (2d Cir. 2006) (person who accepts a transfer of cash participates in the conclusion of the transfer, and therefore "conducts" the transaction within the meaning of section 1956(c)(2));

- *United States v. Li*, 55 F.3d 325, 330 (7th Cir. 1995) ("either initiating or concluding a transaction constitutes the conducting of a transaction");

— or he or she may be a person who directs others to move money

- *United States v. Prince*, 214 F.3d 740 (6th Cir. 2000) (defendant conducts transaction when he directs third party to withdraw cash from a bank, or to send him a check);

— or any member of a money laundering conspiracy

- *United States v. Clark*, 717 F.3d 790, 809 (10th Cir. June 18, 2013) (defendant substantively liable for a money laundering offense in which he did not participate because he was a member of the underlying fraud conspiracy, the money laundering offense furthered the fraud conspiracy, and it was foreseeable to defendant that the fraud proceeds would be laundered);

— generally, it is not difficult to prove, as a factual matter, that the defendant is the one who conducted the financial transaction

Extra-territorial jurisdiction

Many financial transactions involve property that crosses an international border

— generally, your court would have jurisdiction over the offense as long as the transaction occurred *in part* in your country:

— for example, it involved a wire transfer from your country to another place or *vice versa*

- *United States v. Chao Fan Xu*, 706 F.3d 965 (9th Cir. 2013) (court had jurisdiction over transfer of proceeds of Chinese fraud from China to U.S. under § 1957(d) because the transfer took place in the U.S.);

- *United States v. All Assets Held at Bank Julius Baer & Co.*, 571 F. Supp. 2d 1 (D.D.C. 2008) (district court has jurisdiction over wire transfer of dollars between foreign countries where money passed through a New York bank acting as intermediary; applies equally to sections 1956 and 1957);

Depending on your national law, however, your court may or may not have jurisdiction over a financial transaction that occurs entirely in another country but is conducted by a person who is subject to your jurisdiction, such as a citizen of your country who is living or working abroad.

— Moreover, depending on your national law, you would likely have jurisdiction over a transaction occurring entirely in another country if the instructions for conducting the transaction were given by a person in your country.

— Under section 1956(f), the United States has extraterritorial jurisdiction over a money laundering offense committed by a U.S. citizen, even if the offense occurs entirely overseas:

- *United States v. Tarkoff*, 242 F.3d 991, 993-94 (11th Cir. 2001) (defendant, a U.S. citizen, convicted of section 1956(a)(1)(B)(i) offense when he transferred funds from Curaçao to Israel; distinguishing section 1956(a)(2), which requires transfer to or from United States);

— Note that it is the money laundering transaction, not the underlying offense, that is the basis for the exercise of jurisdiction

- *United States v. Real Property Known as 2291 Ferndown Lane,* 2011 WL 2441254, *4 (W.D. Va. June 14, 2011) (to invoke the court's extraterritorial jurisdiction, the Government need only show that the money laundering transaction occurred in part in the U.S.; the underlying crime may have occurred wholly in a foreign country if it is one of the offenses covered by § 1956(c)(7)(B)); *United States v. Real Property Known as Unit 5B*, 2012 WL 1883371, *3 (S.D.N.Y. May 21, 2012) (same);

Knowledge

Under virtually every country's money laundering statute, the Government must show that at the time the financial transaction occurred, the defendant knew that the property involved in the financial transaction was derived from a criminal offense

-- in most cases, he must know that the property represented the proceeds of "some form" of unlawful activity, but he does not need to know precisely what unlawful activity this was;

-- so, it is generally not a defense for the defendant to say, "I didn't know it was drug money, I thought it was the proceeds of insurance fraud"

- *United States v. Turner,* 400 F.3d 491, 496 (7th Cir. 2005) (defendant need not know actual source of the money, but only that it came from "some illegal activity");

- *United States v. Rivera-Rodriguez*, 318 F.3d 268, 271 (1st Cir. 2003) ("defendant is not required to know what type of felony spawned the proceeds but only that some felony did so");

- *United States v. Reiss*, 186 F.3d 149 (2d Cir. 1999) (defendant need only know money is criminally derived; he does not need to know it is drug proceeds; distinguishing sentencing enhancement under 2S1.2 which requires knowledge money is drug proceeds);

Where the defendant is laundering his own money, his knowledge that the money is criminal proceeds is obvious, but the launderer need not be person who committed the underlying offense

- *United States v. Diggles*, 928 F.3d 380 (5th Cir. 2019) (where defendant was the perpetrator of the underlying fraud, it was reasonable for the jury to find that he "was not oblivious to the unlawful source of these funds");

- *United States v. Chon*, 713 F.3d 812, 820 (5th Cir. 2013) (defendant's knowledge that the property was from an illegal source is established if defendant was a participant in the underlying crime);

- *United States v. Leman,* 574 Fed. Appx. 699, 706-07 (6th Cir. 2014) (once the jury convicted defendant of the underlying SUA, it could not fail to find that he knew the laundered funds were proceeds of some form of unlawful activity; omitted jury instruction on that point was therefore harmless);

-- how do you prove a defendant knew he was laundering someone else's dirty money?

Circumstantial evidence of knowledge

In third party money laundering cases, the Government generally must rely on circumstantial evidence of the defendant's knowledge

— such as the defendant's relationship to the source of the money or knowledge of the source's circumstances:

- *United States v. Farrell,* 921 F.3d 116, 139 (4th Cir. 2019) (lawyer who acts as consigliere or "fixer" from drug organization and boasts that he knows 'everything' about the organization, found to have knowledge of the source of the organization's money);

- *United States v. Rivera-Izquierdo,* 850 F.3d 38 (1st Cir. 2017) (circumstantial evidence that defendant knew money given to him by his stepdaughter to buy

two cars was fraud proceeds included their family relationship and his participation in luring victims into her fraud scheme);

- *United States v. George,* 761 F.3d 42, 50 (1st Cir. 2014) (circumstantial evidence established that lawyer who laundered money for former client, knowing that he had retained proceeds of past crimes, knew he was laundering criminally derived property, even though he also knew former client had legitimate assets as well; evidence of "bad acts" committed with the former client was admissible to illustrate the relationship);

- *United States v. Pendleton,* 761 Fed. Appx. 339 (5th Cir. 2019) (that intermediary who purchased property for drug dealers and was reimbursed with drug proceeds knew the money was illegally derived established from direct evidence he knew client was a drug dealer and circumstantial evidence: speaking in codes, awareness of client's modest legitimate income);

– or the unusual nature of the transaction:

- *United States v. Rivas-Estrada,* 761 Fed. Appx. 318 (5th Cir. 2019) (that money transmitter received tens of thousands of dollars in shoe boxes from couriers, and assisted the couriers in structuring the transactions to avoid reporting requirements and suggested fake names for the senders was sufficient to establish knowledge of the illegal source);

- *United States v. Odiase,* ___ Fed. Appx. ___, 2019 WL 4745383 (2nd Cir. Sep. 30, 2019) (defendant's inability to produce documents supporting her claim that her receipt of a third party's money into her bank account, and her transfer of that money to another account, was part of a legitimate business transaction, was circumstantial evidence of her knowledge of the illegal source and that the purpose was to conceal or disguise);

- *United States v. Cedeno-Perez,* 579 F.3d 54, 59 (1st Cir. 2009) (use of code words and concern about police detection reflected defendant's awareness that the currency he was transferring derived from unlawful activity);

- *United States v. Turner*, 400 F.3d 491 (7th Cir. 2005) (that the money involved in a loan came in the form of structured checks, payable to a third party, that were endorsed over to defendant with instructions not to deposit them into a local bank must have suggested to defendant "that something was amiss" regarding the source of the money);

- *United States v. Robins*, 673 Fed. Appx. 13 (2nd Cir. 2016) (circumstantial evidence that car dealer knew he was being paid with drug proceeds included failure to file Form 8300, titling vehicle in third party's name, and putting lien on the vehicle despite receiving payment in full);

– or the use of third parties or other deception:

- *United States v. Rivera-Rodriguez*, 318 F.3d 268, 272 (1st Cir. 2003) (structuring large cash transactions and use of third party name shows knowledge of illegal source of funds);

- *United States v. Cassano*, 372 F.3d 868 (7th Cir. 2004) (evidence that defendant cashed checks for third party while third party was in jail, continued to do so after third party was released, was highly paid for this service, and refused to cosign the checks was sufficient to show knowledge);

— incredible denials:

- *United States v. Odiase,* 2018 WL 2926626, *3 (S.D.N.Y. Jun. 12, 2018) (implausible story regarding source of the money was itself evidence that defendant knew money was illegally derived and was attempting to avert suspicion from herself);

- *United States v. Singh,* 2018 WL 1662483, *4 (C.D. Cal. Apr. 2, 2018) (hawala operator's receipt and transmission of large sums of bulk currency, taking in codes, and lying to law enforcement that box containing large sum of currency actually contained his wife's shoes sufficient to establish knowledge or deliberate ignorance of the illegal source of the money);

– use of offshore accounts; advanced technology:

- *United States v. Bansal*, 663 F.3d 634, 646 (3d Cir. 2011) (knowledge of illegal source inferred from defendants' keeping accounts offshore and using the internet to preserve anonymity);

Knowledge may also be shown by willful blindness (also called deliberate ignorance):

- *United States v. Farrell,* 921 F.3d 116, 145 (4th Cir. 2019) (the knowledge element may be proved in two ways: "by evidence of [the defendant's] subjective knowledge that the proceeds were derived from an unlawful source, or alternatively, by evidence that he made himself 'deliberately ignorant' of that fact");

– This may include affirmative efforts to remain ignorant, as in *Puche,* or ignoring "red flags" that a reasonable person would recognize as indicating that the money came from an illegal source

– Note, for example, that the Moldovan statute expressly includes the phrase, "or should have known" in describing the knowledge requirement

- Examples:

  - *United States v. Haire,* 806 F.3d 991 (8th Cir. 2015) (courier who carried $33,000 in a vacuum-sealed bag on behalf of a known drug dealer, using a one-way train ticket, was at least willfully blind to the illegal source of the money);

  - *United States v. Flores*, 454 F.3d 149, 255-56 (3d Cir. 2006) (attorney was willfully blind to the illegal source of money he assisted client in moving through bank accounts; it was not necessary to show attorney knew the money was from drug trafficking);

  - *United States v. Rivera-Rodriguez*, 318 F.3d 268, 272 (1st Cir. 2003) ("because governing law equates willful blindness with knowledge, it would suffice for the jury to conclude that [defendant] consciously averted his eyes from the obvious explanation for the funds");

  - *United States v. Puche*, 350 F.3d 1137, 1147 n.4, 1149 (11th Cir. 2003) (defendant's deliberate ignorance shown by his reaction when undercover agent attempted to explain the source of the cash he was laundering: defendant said, "No, no, no," and said agent should not say anything about the source of the money);

In all events, the Government must prove that the defendant had the required knowledge *at the time the financial transaction took place*

- Proof that he learned it later is not good enough

  - *United States v. Hughes*, 230 F.3d 815, 820-21 (5th Cir. 2000) (defendant must know money was criminal proceeds at the time he conducts the money laundering transaction; where Brady violation is alleged, evidence that defendant did not learn money was such proceeds until 6 weeks after he received it is relevant to transactions that occurred during such time, but not to transactions conducted later);

Proceeds

The third common element is proof that the money was in fact the proceeds of crime:

- This is implicit in the knowledge requirement: one cannot "know" that the property is criminally derived if it is not criminally derived

- A mistaken belief that the property is criminally derived would not be enough

In most countries, any felony can be a predicate for a money laundering offense, including a foreign crime

- Many countries also include both foreign and domestic minor crimes

- Other countries, like the United States, however, have a list of predicate crimes – we call them "specified unlawful activities" or "SUAs" – that include some foreign and domestic crimes but not others.

- You must check your national law on this point

- The statutes in Moldova, Serbia, Ukraine and Lithuania all seem to apply to the proceeds of any crime, foreign or domestic

Proceeds of Foreign crimes

Most money laundering statutes say that it is an offense to launder the proceeds of a foreign crime

- In the United States, there are only six categories of foreign crimes that qualify as predicates for money laundering

  i. drug trafficking
  ii. crimes of violence
  iii. bank fraud
  iv. bribery and public corruption
  v. arms trafficking, and
  vi. human trafficking and sexual exploitation of children

- most countries, however, do not limit their money laundering statutes in that way

That any foreign crime may be a predicate for money laundering does not mean that you do not need to prove what crime generated the proceeds

- even if it is obvious that the property is the proceeds of crime, your law may require you to prove where the property came from and what crime was committed in that country that generated the proceeds

- but it is not always possible to say from what crime the proceeds were derived or even from what country it came

In Latvia, the money laundering statute says that it is not necessary to prove exactly what crime generated the proceeds

- but it also requires proof that the conduct that generated the proceeds constitutes a criminal offense in the country where the conduct occurred

- this appears to contradict the first provision, as you cannot prove the conduct was an offense in a given country if you don't know what crime and what country you're talking about

If you must identify the foreign crime, you may need to prove the elements of that crime

- There are two new U.S. cases explaining what the Government has to prove re: the elements of the foreign offense:

  - *United States v. Chi,* 936 F.3d 888 (9th Cir. 2019) (Government alleged that the laundered funds were the proceeds of the bribery of a public official – a seismologist working for the South Korean government -- in violation of the applicable South Korean statute, and the court instructed the jury in accordance with the elements of that offense; there was no requirement to prove the elements of 18 U.S.C. § 201, the analogous federal bribery statute);

  - *United States v. Thiam*, 934 F.3d 89 (2nd Cir. 2019) (Government acknowledges that when a defendant is charged with laundering the proceeds of a foreign crime, and there has been no trial or conviction for that offense in a foreign court, the Government must show that each of the elements of the foreign offense was satisfied; but in deciding what the terms in a foreign criminal statute mean, the court should give them the meaning that they would be given in the foreign court, not the meaning that they would have in a US court; declining to reverse conviction of the minister of mines for the Republic of Guinea because trial court did not interpret "official act" under Guinean law in accord with the Supreme Court's decision in *McDonnell*)

Proof of the proceeds element

Proving that the money involved in the transaction is criminal proceeds is easy if you can trace the money to a particular offense, but you need not do that

- *United States v. Colon,* 919 F.3d 510 (7th Cir. 2019) (the Government is not required to tie or trace the cash deposited into a bank account to a particular drug sale);

- it's sufficient if you can prove that the money was generated by the

specified unlawful activity without identifying the date and place of the offense

- *United States v. Hardwell*, 80 F.3d 1471 (10th Cir. 1996) (evidence that the defendant was engaged in drug trafficking and had insufficient legitimate income to produce the money used in the financial transaction was sufficient); *United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (same);

- *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (where SUA is mail fraud, Government need only show that laundered funds came from a fraudulent scheme and that the use of the mails furthered that scheme; no need to trace proceeds to a particular mailing);

Proceeds need not be money:

- *United States v. Kelerchian,* 937 F.3d 895 (7th Cir. 2019) (machineguns illegally obtained from a vendor in violation of the wire fraud statute were proceeds of the fraud; their resale was therefore a violation of § 1957);

- *United States v. Myers,* 854 F.3d 341 (6th Cir. 2017) (rejecting defendant's claim that he had no proceeds of stealing motorhomes until he sold the vehicles; the vehicles themselves were the proceeds of § 2312, so defendant's sale of the motorhomes was properly charged as a money laundering offense);

- *United States v. Meade*, 677 Fed. Appx. 959 (6th Cir. 2017) (stolen motorcycles were the proceeds of transporting stolen vehicles under § 2312; transferring title was thus a money laundering offense);

"Proceeds" need not be newly-acquired property

— In some cases, the "proceeds" are assets that the defendant was able to *retain* as a consequence of his offense

- *United States v. Esquenazi,* 752 F.3d 912, 936 (11th Cir. 2014) (money defendant retained by having its debt reduced in exchange for promise to pay a bribe was proceeds of the bribery offense);

- *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008) ("unpaid taxes unlawfully retained by defendants represented the 'proceeds' of a fraud");

Proceeds remain proceeds as they change form, no matter how much time passes or who else handles the money:

- *United States v. Rivera-Izquierdo,* 850 F.3d 38 (1st Cir. 2017) (when fraud proceeds are used to gamble, the gambling winnings are "derived from" the fraud proceeds, and a subsequent transaction involving those winnings can therefore be a money

laundering offense);

- *United States v. George*, 363 F.3d 666 (7th Cir. 2004) (where defendant uses counterfeit securities to buy computer chips and then converts the chips to cash, the cash becomes the SUA proceeds);

- *United States v. Hall*, 434 F.3d 42, 51 (1st Cir. 2006) (money remained drug proceeds after it was loaned to a third party, the loan was repaid, and the payments were deposited into a bank account and transferred to another account);

- *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (Government agent's handling of drug money as an intermediary at one stage of the case did not purge it of its taint; it was still SUA proceeds when defendant used it to conduct his transaction);

- *United States v. McQueen,* 636 Fed. Appx. 652 (6th Cir. 2016) (evidence that Defendant used fraudulently-obtained investor funds to purchase a motorcycle which he, in turn, used as a trade-in to obtain a second motorcycle, was sufficient to establish that the acquisition of the second motorcycle was an offense under § 1957);

Finally, otherwise untainted property may be considered the proceeds of criminal offense if it is part of a related or parallel transaction that involves the criminal proceeds

- otherwise money launderers could evade prosecution by putting criminal proceeds in one account and taking money from another, or by using a hawala

- for example, suppose the defendant receives drug proceeds from a drug dealer and puts the money in Bank Account A

- then, because he has the money in Account A, he is able to use the money in Bank Account B to conduct a financial transaction

- in that case, the money taken from Account B should be considered criminal proceeds

    - *United States v. Covey*, 232 F.3d 641, 646 (8th Cir. 2000) (where defendant receives cash from drug dealer and gives drug dealer checks drawn on own funds in return, transfer of checks is a money laundering offense involving SUA proceeds);

- *United States v. Mankarious*, 151 F.3d 694, 706-07 (7th Cir. 1998) (if check constituting SUA proceeds is deposited in bank account and second check is written on that account, second check constitutes proceeds, even if first check has not yet cleared);

Circumstantial evidence

The case law is filled with colorful examples of instances where the government proved the proceeds element with circumstantial evidence:

- *United States v. Colon,* 919 F.3d 510 (7th Cir. 2019) ("there is nothing wrong with circumstantial evidence;" the jury is entitled to infer from the evidence that cash deposits included drug proceeds);

- *United States v. Gibson*, 875 F.3d 179 (5th Cir. 2017) (forensic accountant's testimony that fraud proceeds were deposited into one bank account and that transfers from that account to a second account preceded cash withdrawals from the second account that were used to pay kickbacks was sufficient to show defendants conspired to pay the kickbacks with fraud proceeds);

- *United States v. Richardson*, 658 F.3d 333, 338 (3rd Cir. 2011) (proof that drug dealer's legitimate business was insolvent was evidence that the money he used to buy a house came from his drug business);

- *United States v. Slagg*, 651 Fed. Appx. 832, 845 (8th Cir.2011) ("pointedly guarded telephone conversations," defendant's drug dealing and lack of legitimate income, and efforts to collect money from people who owed debts to defendant, sufficient to show money used to pay defendant's bail was drug proceeds);

- *United States v. Prevezon Holdings, Ltd.,* 251 F.Supp.3d 684 (S.D.N.Y. 2017) (timing and pattern of transactions may serve as circumstantial evidence that the money moving through a complex series of transactions is traceable to the original SUA);

But the most common way is to use the defendant's lack of legitimate income to show that the defendant must have used his criminal proceeds – and not clean money – to conduct the transaction:

- *United States v. Colon,* 919 F.3d 510 (7th Cir. 2019) (where defendant used his business as a front for a drug operation, and the legitimate business was losing money, that cash deposits from both the business and the drug operation exceeded the legitimate revenue allowed jury to infer that at least some of the cash was drug proceeds);

- *United States v. Banks,* 884 F.3d 998 (10th Cir. 2018) (evidence that defendant was a drug dealer with no legitimate source of income sufficient to establish that the money he used to purchase money orders was drug proceeds);

- *United States v. McQueen,* 636 Fed. Appx. 652 (6th Cir. 2016) (case agent's testimony that defendant's sole source of income at the time the conducted the alleged money laundering transactions was funds obtained from investors was sufficient to satisfy the "proceeds element" of §§ 1956 and 1957);

- *United States v. Foreste*, 751 Fed. Appx. 48 (2nd Cir. 2018) (defendant's lack of legitimate income – evidenced by his tax returns – combined with testimony that his drug customers made deposits into his bank account on the dates the promotion money laundering transactions allegedly occurred – sufficient to sustain jury's verdict on the proceeds element);

Remember that while you must prove that the money is the proceeds of crime, you do not nee to prove that the defendant is the one who committed that crime

— In a third party money laundering case, the money may be the proceeds of a crime committed by someone else

- *United States v. Sheridan,* 679 Fed. Appx. 492 (7th Cir. 2017) (defendant who opened bank accounts used to funnel drug money from Illinois to California, withdrew the money and gave it to drug dealer, knew transaction was designed to conceal drug dealer's connection to the drug proceeds);

- *United States v. Wert-Ruiz*, 228 F.3d 250, 253 (3d Cir. 2000) (money remitter convicted of laundering drug money for drug traffickers; good explanation of how money remitters operate);

- *United States v. Abbell*, 271 F.3d 1286, 1290 (11th Cir. 2001) (defense attorney convicted of laundering client's money);

Or, even if the defendant committed the underlying crime, he may be charged with that crime in a different indictment, or in another country, or not charged with that crime at all

— So, for either of those reasons, there is no need to charge the defendant with the underlying crime in the same case in which he is charged with money laundering

- *United States v. McGauley*, 279 F.3d 62, 73 (1st Cir. 2002) (because SUA offenses need not be charged in the same indictment, defendant may be convicted of laundering the proceeds of a portion of a scheme to defraud that is not charged as a substantive offense);

- *United States v. Gregory*, 322 F.3d 1157, 1165-66 (9th Cir. 2003) (no constitutional violation in waiting until after defendant has been convicted of drug charges and has served his sentence before charging him with money laundering based on same offense);

Only part of the money need be dirty; any money involved in a transaction from a commingled account is considered "proceeds"

- *United States v. Warshak*, 631 F.3d 266, 332 (6th Cir. 2010) (a transaction does not have to consist solely of criminal proceeds to constitute a money laundering offense; that a transaction may have included proceeds of a legitimate side of defendant's business is irrelevant);

- *United States v. Huber*, 404 F.3d 1047, 1058 (8th Cir. 2005) (the presence of legitimate funds does not make a money laundering transaction lawful; it is only necessary to show that the transaction *involves* criminal proceeds);

- *United States v. Bieganowski*, 313 F.3d 264, 379-80 (5th Cir. 2002) (even if some of health care provider's income was legitimate, transfer of commingled funds would satisfy the proceeds element of section 1956(a)(1));

The defendant need not have physical possession of the funds for them to be proceeds:

— the money laundering offense can take place after the defendant has caused the proceeds to be sent to a third party

- *United States v. Prince*, 214 F.3d 740, 752-53 (6th Cir. 2000) (money becomes proceeds when victim wires it to third party designated by defendant; defendant need not be in physical possession for money to be proceeds);

Merger issue

I talked about timing with respect to the knowledge requirement: the defendant has to know the property is the proceeds of some form of unlawful activity at the time the financial transaction takes place

— similarly, the money must be SUA proceeds *at the time the financial transaction occurs*

— this is another reason why it is important to choose the right financial transaction

— for example, if a drug sale takes place on a street corner, you have a

financial transaction, but it does not involve SUA proceeds because there are no proceeds until the sale is complete;

- *United States v. Harris,* 666 F.3d 905, 909 (5th Cir. 2012) (“mere payment of the purchase price for drugs by whatever means . . . does not constitute money laundering” because the money does not become proceeds until the payment is made);

- *United States v. Butler*, 211 F.3d 826, 830 (4th Cir. 2000) (“the laundering of funds cannot occur in the same transaction through which those funds first become tainted by crime”);

— the subsequent deposit of the money would involve proceeds, however

— and it would be different if you could show that the “buy” money was the proceeds of an earlier sale

The merger of the money laundering financial transaction and the underlying SUA is also a big problem in fraud cases:

— inducing a victim to wire money to the defendant is not money laundering if happens all in one step

- *United States v. Johnson,* 971 F.2d 562 (10th Cir. 1992) (where defendant fraudulently induces victim to wire transfer funds directly to defendant's account, such transfer does not constitute money laundering, because funds were not "criminally derived" at the time the transfer took place);

— the rule is that the acts that produce the proceeds being laundered must be distinct from the conduct that constitutes money laundering;

- *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (explaining *Johnson*);

- *United States v. Carucci*, 364 F.3d 339 (1st Cir. 2004) (conviction reversed because evidence did not establish that the SUA offense occurred before the money laundering transaction);

— but a two-step transaction -- victim sends check to defendant, defendant deposits check -- is money laundering

- *United States v. Baxter,* 761 F.3d 17, 29-30 (D.C. Cir. 2014) (where defendant embezzled funds by writing check from her employer to front company, which in turn transferred funds to co-defendant, latter transactions occurred after the money was proceeds);

- *United States v. Silvestri,* 409 F.3d 1311 (11th Cir. 2005) (mail fraud yielded proceeds in the form of a check before defendant committed a money laundering offense by depositing the check);

— so is a transaction that takes place after the first phase of the underlying crime is complete, but while the underlying crime is still on-going

- *United States v. Kennedy,* 707 F.3d 558, 566-67 (5th Cir. 2013) (there was no merger problem when bank transferred fraudulently-obtained loan proceeds to defendant's loan-closing company as the first step, and defendants transferred a portion of those proceeds to a shell corporation they controlled as the second step; after step one, defendants had possession of the proceeds of a completed wire fraud offense);

- *United States v. Diggles,* 928 F.3d 380, 389 n.3 (7th Cir. 2019) (where defendant's fraud involved receiving hurricane-relief funds in account of Foundation he controlled and then moving that money to the account of a church where he was pastor, "the fraud got the money into the Foundation's account; the money laundering got it into the church's");

Specific Intent

If the defendant is charged under a transactional money laundering statute – a statute that makes it an offense merely to receive, use, spend or possess criminal proceeds – you can stop here

— Such statutes contain no specific intent element

— For concealment or promotion money laundering, however, you must prove that at the time the defendant conducted the transaction, he acted with a specific intent.

— For example, a concealment money laundering statute may require proof that the defendant *intended to* conceal or disguise the nature, source, location, ownership or control of the criminal proceeds,

— Or that the transaction *had the effect* of concealing or disguising those things

1. Promotion money laundering

Let's look first at what the Government would have to prove under a "promotion money laundering" statute

- to prove promotion money laundering, the Government would have to prove that the defendant intended to promote another criminal offense

- this can be the same offense that generated the proceeds or an entirely separate crime

- As I mentioned earlier, in such a case the prosecutor would *not* have to prove any intent to conceal or disguise the criminal proceeds: that would be "concealment money laundering" which we'll discuss in a minute

    - *United States v. Alerre*, 430 F.3d 681, 693 n.14 (4th Cir. 2005) (explaining the difference between promotion and concealment money laundering);

    - *United States v. Marbella*, 73 F.3d 1508, 1514 (9th Cir. 1996) (statute is worded in the disjunctive; therefore, conviction can be based on intent to promote without any evidence of intent to conceal or disguise);

    - *United States v. Reed*, 264 F.3d 640, 650-52 (6th Cir. 2001) (that defendant conducted the transaction without concealing or disguising anything has no bearing on her conviction for a promotion offense under section 1956(a)(1)(A)(i));

Examples of promotion money laundering:

- plowing back: defendant reinvests the money to continue the offense

    - *United States v. Lawrence*, 405 F.3d 888 (10th Cir. 2005) (using proceeds of Medicare fraud scheme to pay doctor whose participation was essential to the scheme, and to keep "the doors of the clinic open," promoted the scheme and were not ordinary business expenses);

    - *United States v. Grasso*, 381 F.3d 160 (3d Cir. 2004) (reinvesting proceeds of fraudulent scheme to cover advertising, printing, and mailing expenses was promotion money laundering);

    - *United States v. Fitzgerald,* 496 Fed. Appx. 175, 178 (3rd Cir. 2012) (following *Grasso*; reinvestment or "plowing back" drug proceeds to buy more drugs is still a promotion money laundering offense even though the

transaction is part of the offense being promoted);

- *United States v. Coles*, 558 Fed. Appx. 173, 180 (3d Cir. 2014) (paying for apartment where equipment used to divide and package cocaine is located is promotion even though, for *Santos* purposes, it is not an essential expense);

– but ordinary expenses that would have been incurred in any event by a legitimate business are not promotion expenses:

- *United States v. Miles*, 360 F.3d 472 (5th Cir. 2004) (any expenditure in furtherance of wholly illegitimate business can be a promotion offense; but paying "customary, reasonable and legal operating expenses" of a partially legitimate business is not promotion);

- *United States v. Brown*, 186 F.3d 661, 670-71 (5th Cir. 1999) (using proceeds of fraud for ordinary business expenses of legitimate business through which fraud was conducted is insufficient to show intent to promote even though such expenses indirectly keep the scheme going by bringing in more potential victims; expenses must be more directly related to the fraud to prevent the Government from using section 1956(a)(1)(A)(i) as a "money spending" statute);

- *United States v. McGahee*, 257 F.3d 520, 527 (6th Cir. 2001) (following *Brown*; paying home mortgage and other household expenses did not promote fraud scheme even though defendant conducted scheme from his residence because purpose of payments was primarily to maintain property as a residence and not to perpetuate the fraud);

– distributing proceeds:

- *United States v. Valdez*, 726 F.3d 684, 691 (5th Cir. 2013) (paying employees who submitted the false billings in a health care fraud scheme above normal salary supported jury's conclusion that the payments were made to secure loyalty or cooperation in the scheme, and were not normal business expenses);

- *United States v. Warshak,* 631 F.3d 266, 319 (6th Cir. 2010) (distributing proceeds to employees of a fraud scheme "to reward faithful service and encourage future commitment to the criminal endeavor" promotes the continuation of the scheme);

- *United States v. Alerre*, 430 F.3d 681, 695 (4th Cir. 2005) (distributing fraud proceeds to codefendants and other employees as compensation for their participation in a health care fraud scheme promotes the scheme);

- *United States v. Kelley*, 471 Fed. Appx. 840, 845 (11th Cir. 2012) (monthly dividend payments gave the principals in a steroid distribution scheme "an incentive to continue their activities despite the risks inherent in such activity;" "there is no requirement that the funds were reinvested into the illegal activity");

– using proceeds to facilitate the SUA or keep the scheme going:

- *United States v. Gibson*, 875 F.3d 179 (5th Cir. 2017) (using proceeds of Medicare fraud to pay kickbacks to recruiters to bring in more patients promote the continuation of the scheme by providing opportunities to submit new fraudulent bills);

- *United States v. Ayala-Vazquez,* 751 F.3d 1, 15-16 (1st Cir. 2014) (using drug proceeds to pay for Christmas parties in public housing project promoted the drug organization's success by maintaining good relations with the project's residents);

- *United States v. Pendelton,* 832 F.3d 934 (8th Cir. 2016) (using drug proceeds to buy more drugs is promotion money laundering);

- *United States v. Fata,* 650 Fed. Appx. 260 (6th Cir. 2016) (using the proceeds of health care fraud to fund a clinic that will be used to generate more fraudulent billings constitutes promotional money laundering);

- *United States v. Frazier,* 605 F.3d 1271, 1281-82 (11th Cir. 2010) (paying a courier to drive drugs from Canada to the U.S. and return with firearms promotes a specified unlawful activity);

- *United States v. Singh*, 518 F.3d 236, 247-48 (4th Cir. 2008) (prostitute who uses the money received from her first customer of the day to pay for her motel room commits promotion money laundering where the payment gives her the right to the use of the room for the rest of the day without further charge, and creates goodwill for future transactions);

– using proceeds to "lull" prospective fraud victims or to create an aura of legitimacy promotes SUA offense:

- *United States v. Warshak,* 631 F.3d 266, 319 (6th Cir. 2010) (using fraud proceeds to make a charitable contribution promotes the scheme if it was "intended to raise [Defendant's] philanthropic profile and create an aura of legitimacy");

– transaction intended to avoid detection:

- *United States v. Huber,* 404 F.3d 1047 (8th Cir. 2005) (transaction that helps defendant maintain the appearance of eligibility for funds for which he was not eligible promotes the underlying fraud scheme);

- *United States v. Manafort,* 318 F.Supp.3d 1 (D.D.C. 2018) (moving money through layers of international transactions by corporate entities may promote a violation of FARA by concealing the relationship between the defendant and his foreign clients);

2. Concealment money laundering

A concealment money laundering statute makes it an offense to conduct a financial transaction knowing that the purpose of the transaction was to "conceal or disguise" the source, location, ownership, nature or control of criminal proceeds.

- *United States v. Dvorak,* 617 F.3d 1017, 1022 (8th Cir. 2010) (Congress made concealing the location of criminal proceeds a serious offense under the money laundering laws because "money that cannot be found cannot be subject to forfeiture");

— proof that the transaction was designed to conceal *any one* of the listed attributes is sufficient

- *Cuellar v. United States*, 553 U.S. 550 (2008) (rejecting view that the only way to commit concealment money laundering is to attempt to create the appearance of legitimate wealth; such "classic money laundering" is one way to violate the statute, but the text makes clear that there are many other ways to violate it as well);

- *United States v. Concepcion,* 2008 WL 4585331 (2d Cir. Oct. 14, 2008) (following *Cuellar*; creating the appearance of legitimate wealth is not the only way to satisfy the concealment element);

Knowledge that the purpose of the transaction was to conceal or disguise almost always has to be shown by circumstantial evidence

-- engaging in unusual or convoluted transactions implies knowledge that purpose was to conceal or disguise:

- *United States v. Wilkes*, 662 F.3d 524, 547 (9th Cir. 2011) (making three transfers within a week before using proceeds of fraudulently-obtained contract to pay kickback was a convoluted transaction designed to conceal the source and future ownership of the money);

- *United States v. Morales-Rodriguez*, 467 F.3d 1, 13 (1st Cir. 2006) (monthly secretive transfers of funds between three separate bank accounts was an

attempt to conceal the nature, location, source, ownership, and control of proceeds);

- *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (moving cash from Miami to New York to Israel, where it was deposited in an account in a false name, was sufficient to show that when defendant paid his lawyer with check drawn on that account, he intended to conceal the source of the money);

-- using third party name, or name of legitimate business

- *United States v. Banks,* 884 F.3d 998 (10th Cir. 2018) (drug dealer's use of third parties to buy blank money orders instead of doing it himself, and directing them to send them to a third party associated with his co-defendant, showed intent to conceal the source of the money);

- *United States v. Sheridan,* 679 Fed. Appx. 492 (7th Cir. 2017) (having third party open bank accounts that were used to deposit drug proceeds in one part of the country and funnel them to California concealed the relationship of the money to the drug dealer and his customer; that the transactions were conducted in third party's name and did not conceal his identity was irrelevant);

- *United States v. Ayala-Vazquez,* 751 F.3d 1, 16 (1st Cir. 2014) (using straw purchaser to acquire race cars with drug proceeds was concealment money laundering);

— using shell companies:

- *United States v. Patel,* 651 Fed. Appx. 468 (6th Cir. 2016) (use of two shell companies to move Medicare fraud proceeds from one coconspirator to another shows that at least one purpose of the transaction was concealment);

- *United States v. Prevezon Holdings, Ltd.,* 251 F.Supp.3d 684 (S.D.N.Y. 2017) (use of coded language and "corporate shells" is evidence of a design to conceal, as is engaging in unnecessary transactions to add extra degrees of separation between the defendant and the source of the funds);

-- commingling dirty money and clean money

- *United States v. Jackson*, 935 F.2d 832, 841 (7th Cir. 1991) (commingling drug proceeds with legitimate funds in church bank account showed intent to conceal or disguise);

- *United States v. Ward*, 197 F.3d 1076, 1082 (11th Cir. 1999) (Acommingling of funds is itself suggestive of a design to hide the source of ill-gotten gains"; following *Jackson*);

- *United States v. Shepard*, 396 F.3d 1116 (10th Cir. 2005) (commingling fraud proceeds with funds in bank account of legitimate business shows intent to conceal);

— structuring transactions to avoid a currency transaction reporting requirement:

- *United States v. Elder,* 682 F.3d 1065, 1072 (8th Cir. 2012) (paying for prescriptions with used, small denomination bills rather than by check, and instructing intermediary to limit bank deposits to amounts under $10,000, is circumstantial evidence of intent to conceal or disguise);

- *United States v. Richardson,* 658 F.3d 333, 341 (3d Cir. 2011) (listing ways in which concealment may be shown, including making structured cash deposits before using funds to conduct a transaction, and funneling money through a legitimate business);

— use of codes; unusual secrecy:

- *United States v. Gotti*, 459 F.3d 296, 337 (2d Cir. 2006) (cash transactions conducted through several intermediaries, in a surreptitious manner, and using coded language, evidenced intent to conceal the source of the money);

— falsifying nature of the transaction:

- *United States v. Kelley*, 461 F.3d 817, 829-30 (6th Cir. 2006) (disguising kickback to public official as payment to wife for consulting services, depositing check, and having bank issue cashier's check to hotel to pay for wife's birthday party);

- *United States v. Hall*, 434 F.3d 42, 53 (1st Cir. 2006) (giving seller $24,000 in cash in a paper bag and falsifying the bill of sale to show the price of a vehicle was only $5,000 allowed defendant to conceal the additional funds);

— using real estate transaction to conceal or disguise:

- *United States v. Delgado*, 653 F.3d 729, 738 (8th Cir. 2011) (understating the purchase price on real estate documents and paying the difference with cash in an unrecorded transaction violates § 1956(a)(1)(B)(i));

— sending property abroad:

- *United States v. Cihak*, 137 F.3d 252, 262 (5th Cir. 1998) (defendant's apparent hurry to liquidate accounts and transfer them out of the country sufficient to show intent to conceal source and location);

- Dealing exclusively in cash or converting proceeds to goods and services or to cash:

  - *United States v. Ayala-Vazquez,* 751 F.3d 1, 15-16 (1st Cir. 2014) (paying expenses in small bills in paper bags through third parties was evidence of concealment);

  - *United States v. Bowman*, 235 F.3d 1113, 1117-18 (8th Cir. 2000) (transformation of stolen funds into another form — *i.e.,* merchandise purchased by defendant's girlfriend—evinces the design to conceal);

  - *United States v. Dvorak*, 617 F.3d 1017, 1024 (8th Cir. 2010) (depositing fraud proceeds in a bank account and immediately withdrawing the funds as cash, while not dispositive, is strong evidence of an intent to conceal the location of the funds "for the simple reason that cash cannot be traced");

Be careful, simply spending money on goods or services may not be sufficient to show purpose was to conceal or disguise

  - *United States v. Sanders*, 929 F.2d 1466 (10th Cir. 1991) (buying a car in own name or daughter's name with drug proceeds is not concealment money laundering; it is merely "money spending");

  - *United States v. Stoddard,* 892 F.3d 1203 (D.C. Cir. 2018) (where drug dealer and his cousin went together to car dealership to buy car in cousin's name with drug dealer's money and for drug dealer's exclusive use, there was insufficient evidence purpose of the transaction was to conceal the ownership or source of the money);

- Where the defendant is making what would otherwise be a legitimate commercial transaction, the Government must show that there was something about the transaction that evidenced an intent to conceal or disguise

  - *United States v. Messino*, 382 F.3d 704 (7th Cir. 2004) (purchase of real property made with structured cash deposits and property titled in defendant's daughter's name was intended to conceal);

  - *United States v. Magluta,* 418 F.3d 1166 (11th Cir. 2005) (using drug proceeds to pay attorney's fee was not simply money spending where defendant went to great lengths -- including use of foreign bank account in false name -- to conceal source of the money);

  - *United States v. White,* 718 Fed. Appx. 353 (6th Cir. 2017) (defendant who purchased cars in her name on behalf of drug dealer did not conceal her identity but did conceal and disguise the ownership and control of the vehicles);

Note that in these cases, the defendant could be found guilty for concealing or disguising *any* of the attributes of the property being laundered

- it is an offense to conceal or disguise the nature, source, location, ownership or control of the property

- the crime is *not* limited to concealing the identity of the wrongdoer:

    - *United States v. Bikundi,* 926 F.3d 761 (D.D.C. 2019) (moving money from business bank account through accounts of shell companies that defendants controlled, and ultimately to their personal accounts may not have concealed identity, but it concealed the source of the money);

    - *United States v. Gonzalez,* 918 F.3d 808 (10th Cir. 2019) (that use of safe deposit box held in defendant's name did not conceal his identity was irrelevant; concealing location or control of SUA proceeds is sufficient);

    - *United States v. Stewart,* 902 F.3d 664 (7th Cir. 2018) (creating a business and opening a business account solely to make deposited drug proceeds appear to be legitimate business revenue was sufficient to show intent to conceal even though defendant made no effort to conceal his identity as the business owner);

    - *United States v. Warshak*, 631 F.3d 266, 321 (6th Cir. 2010) (transactions conducted in defendant's own name did not conceal his identity, but their enormous complexity evinced an intent to conceal the nature and source of the proceeds);

I always enjoy the cases where the defendant says, "my transaction concealed nothing; it was entirely transparent; even a law enforcement agent could follow it"

- *United States v. Bikundi,* 926 F.3d 761 (D. C. Cir. 2019) (that defendant's scheme was "vulnerable to dogged investigation" by a Government agent who traced defendants' fraud proceeds from one bank account to another doesn't mean that in moving tens of millions of dollars through sham companies they weren't trying to conceal the source of their money; distinguishing *Adefehinti*);

- *United States v. Tobin*, 676 F.3d 1264, 1290 (11th Cir. 2012) ("complex arrangements" may be helpful in showing an intent to conceal but are not necessary; that defendant withdrew funds from his bank account after Government executed a search warrant "provided a sufficient basis for the jury to find that [defendant] sought to conceal those funds from the Government");

- *United States v. Naranjo,* 634 F.3d 1198, 1210 (11th Cir. 2011) ("It is irrelevant that [Defendant] left enough evidence to allow a novice investigator to trace" the

transactions back to him; “the statute requires only that proceeds be concealed, not that they be concealed well”);